

§ 648.74

50 CFR Ch. VI (10–1–14 Edition)

ITQ allocation in the following fishing year.

(2) Any amount of an ACL overage that cannot be otherwise attributed to an ITQ allocation holder will be deducted from the appropriate ACL in the following fishing year.

(b) *Maine mahogany quahog fishery.* If the ocean quahog ACL is exceeded, and the Maine mahogany quahog fishery is responsible for the overage, then the Maine fishery ACT shall be reduced in the following year by an amount equal to the ACL overage.

[76 FR 60623, Sept. 29, 2011]

§ 648.74 Annual individual allocations.

(a) *General.* (1) Each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (*i.e.*, October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.72. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.77. Amounts of allocation of 0.5 cages or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 cages created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in cages and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.77(b).

(2) The Regional Administrator may, after publication of a fee notification in the FEDERAL REGISTER, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers*—(1) *Allocation percentage.* Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.77 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) *Review.* If the Regional Administrator determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson-Stevens Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

[76 FR 60623, Sept. 29, 2011]

§ 648.75 Shucking at sea and minimum surfclam size.

(a) *Shucking at sea*—(1) *Observers.* (i) The Regional Administrator may allow the shucking of surfclams or ocean

quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surfclams and ocean quahogs harvested in the shell prior to shucking.

(ii) Any vessel owner may apply in writing to the Regional Administrator to shuck surfclams or ocean quahogs at sea. The application shall specify: Name and address of the applicant; permit number of the vessel; method of calculating the amount of surfclams or ocean quahogs harvested in the shell; vessel dimensions and accommodations; and length of fishing trip.

(iii) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(iv) Any observer shall certify at the end of each trip the amount of surfclams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(2) *Conversion factor.* (i) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surfclams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surfclams or ocean quahogs harvested in the shell.

(ii) The Regional Administrator shall publish notification in the FEDERAL REGISTER specifying a conversion factor, together with the data used in its calculation, for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the FEDERAL REGISTER specifying the conversion factor.

(iii) If the Regional Administrator makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surfclams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

(b) *Minimum surfclam size*—(1) *Minimum length.* The minimum length for surfclams is 4.75 inches (12.065 cm).

(2) *Determination of compliance.* No more than 50 surfclams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surfclams in any inspected cage of surfclams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(3) *Suspension.* Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-length standard, unless discard, catch, and survey data indicate that 30 percent of the surfclams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell length is not attributable to beds where the growth of individual surfclams has been reduced because of density dependent factors.

(4) *Measurement.* Length is measured at the longest dimension of the surfclam shell.

[76 FR 60623, Sept. 29, 2011]

§ 648.76 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surfclam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Regional Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Regional Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Regional Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the "Boston Foul Ground" and located at 42°25'36" N. lat., 70°35'00" W. long., with a radius of 1 nm (1.61 km) in every direction from that point.

(2) *New York Bight.* The polluted area and waste disposal site known as the "New York Bight" and located at 40°25'04" N. lat., 73°42'38" W. long., and with a radius of 6 nm (9.66 km) in every